

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JOSEPH R. CELLURA, *et al.*,

Plaintiffs,

v.

DOUGLAS R. DOLLINGER, *et al.*,

Defendants.

Case No. 3:24-cv-00395-MMD-CLB

ORDER

**I. SUMMARY**

Married Plaintiffs Joseph and Emelia Cellura (collectively, “Plaintiffs”) sued Defendants Douglas R. Dollinger, the Law Offices of Douglas R. Dollinger, P.C. & Associates (“DDPC”), Michael F. Ghiselli, and Does 1-10 (collectively, “Defendants”) in state court for defamation and settlement agreement violations. (ECF No. 1 at 17-19.) Defendants removed the case to this Court. (*Id.* at 1.) Plaintiffs now move to remand, primarily contending that Defendants have not met their burden to show the amount in controversy requirement is satisfied.<sup>1</sup> (ECF No. 4 (“Motion”).) The Court will grant the Motion because Defendants fail to prove with legal certainty that the amount in controversy exceeds \$75,000.

**II. BACKGROUND**

Plaintiffs’ suit arises from several conflicts with Defendants. The following allegations come from the Complaint (ECF No. 1 at 12-21) unless otherwise indicated.

ADMI is a corporation incorporated in Nevada. (*Id.* at 14.) Based on share certificates, Joseph Cellura holds 70% of the outstanding stock of ADMI, while Michael Ghiselli holds 30%. (*Id.* at 15.) However, Ghiselli and Dollinger represented to Cellura

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<sup>1</sup>The Court reviewed Defendants’ response (ECF No. 10) and Plaintiffs’ reply (ECF No. 12).

1 and other third parties that the two of them controlled the majority of outstanding shares.  
2 (*Id.*) In response, Cellura filed a derivative action in the Second Judicial District Court of  
3 the State of Nevada. (*Id.*) Dollinger and Ghiselli sued both Joseph and Emelia Cellura in  
4 the United States District Court for the Southern District of New York, alleging that they  
5 controlled ADMI and that the Celluras “misappropriated ADMI assets.” (*Id.*)

6 Additionally, Dollinger and DDPC represented the Celluras as legal counsel for  
7 “several years.” (*Id.* at 15-16.) In December 2023, Dollinger and the Celluras executed a  
8 settlement where they agreed to a mutual release in exchange for payment to Dollinger.  
9 (*Id.* at 16.) The parties agreed under this settlement not to “disparage” one another to any  
10 third party, but Dollinger did so to Cellura’s business associates. (*Id.*)

11 Finally, In August 2024, Dollinger, Ghiselli, and “perhaps others working at their  
12 direction,” sent a defamatory email to the Celluras’ daughter’s dance teacher which  
13 alleged that the Celluras embezzled millions of dollars. (*Id.* at 17.) The email was sent  
14 through a “ghost” return address with a pseudonym, but only Ghiselli could have known  
15 the identity of the dance instructor based on his relationship with the Celluras. (*Id.*)

16 Based on these allegations, Plaintiffs allege claims for breach of contract,  
17 defamation per se and conspiracy to defame, and declaratory and injunctive relief. (*Id.* at  
18 17-19.) In their Complaint, Plaintiffs allege that they have “been injured in an amount of  
19 no more than \$74,000.” (*Id.* at 18.) They presently move to remand, arguing that  
20 Defendants failed to meet their burden of establishing subject matter jurisdiction because  
21 the amount in controversy does not exceed \$75,000. (ECF No. 4 at 1.)

### 22 **III. DISCUSSION**

23 Federal courts are courts of limited jurisdiction, having subject matter jurisdiction  
24 only over matters authorized by the Constitution and Congress. See e.g., U.S. CONST. art.  
25 III, § 2, cl. 1; *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A suit  
26 filed in state court may be removed to federal court if the federal court would have had  
27 original jurisdiction over the suit at commencement of the action. See 28 U.S.C. § 1441(a).  
28 However, courts strictly construe the removal statute against removal jurisdiction and

1 “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal in  
2 the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (citation omitted).

3 The only relevant dispute is whether the amount in controversy requirement is  
4 met.<sup>2</sup> See 28 U.S.C. § 1332(a)(1) (stating that the amount in controversy must exceed  
5 \$75,000, exclusive of interests and costs). “[T]he amount in controversy is determined  
6 from the face of the pleadings.” *Crum v. Circus Circus Enters.*, 231 F.3d 1129, 1131 (9th  
7 Cir. 2000) (citation omitted). If the complaint specifies the amount sought in damages,  
8 remand is warranted if it appears to a legal certainty that the amount in controversy is  
9 less than the jurisdictional minimum.<sup>3</sup> See, e.g., *Abrego*, 443 F.3d at 683 n.8; *Saint Paul*  
10 *Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938). Defendants bear the  
11 burden of proof. See *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403 (9th Cir.  
12 1996) (citing *Gaus*, 980 F.2d at 566-67).

13 Here, Plaintiffs allege “no more than \$74,000 in damages.” (ECF No. 1 at 18.)  
14 Defendants removed based on their assertion that that the sum of Plaintiffs’ alleged  
15 \$74,000 in damages, plus interest and legal fees, exceeds \$75,000. (*Id.* at 7.) Plaintiffs  
16 contend that removal was improper because Defendants produced no facts or evidence  
17 that establish with legal certainty that Plaintiffs’ damages will exceed \$75,000. (ECF No.  
18 4 at 4-5.) In their response, Defendants make several arguments, including that attorneys’  
19 fees “are likely to exceed \$25,000,” potential punitive damages could “push the amount

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21 <sup>2</sup>The parties do not dispute that there is complete diversity of citizenship. (ECF  
22 Nos. 1 at 7; 4 at 2-3.) In the Motion, Plaintiffs contend that this matter does not raise a  
23 federal question because their claims of breach of contract, defamation per se, and  
24 declaratory and injunctive relief “arise[] exclusively and explicitly under Nevada state and  
common law.” (ECF No. 4 at 5-6.) Defendants do not address the federal question  
jurisdiction argument in their response (ECF No. 10). The Court accordingly finds that the  
only relevant question concern diversity jurisdiction, specifically whether the amount in  
controversy requirement is satisfied.

25 <sup>3</sup>Defendants argue that the preponderance of evidence standard should be used  
26 instead. (ECF No. 10 at 4.) However, the preponderance of evidence standard only  
27 applies when the damages sought in a complaint are uncertain or ambiguous. See, e.g.,  
28 *Abrego v. Dow Chem. Co.*, 443 F.3d 676, 683 n.8 (9th Cir. 2006) (“In this circuit, [the  
preponderance of evidence] standard applies only if the state court complaint does not  
specify the amount sought as damages.”) This standard does not apply here because  
Plaintiffs specifically claim no more than \$74,000. (ECF No. 1 at 18.)

1 in controversy well over \$75,000,” the financial impact of injunctive relief “could easily  
2 exceed \$75,000,” and harm to Defendants’ business and reputation “will likely exceed  
3 \$75,000.” (ECF No. 10 at 4-7.) As explained below, the Court finds that Defendants have  
4 not met their burden of proving to a legal certainty that the amount in controversy has  
5 been met. The Court addresses Defendants’ categories of damages and costs that  
6 Defendants contend bring the amount in controversy from \$74,000 to above \$75,000  
7 in turn.

#### 8 **A. Attorneys’ Fees**

9 Attorneys’ fees may be considered part of the amount in controversy if a statute  
10 authorizes fees to a successful litigant. See *Pereza v. Progressive Direct Ins. Co.*, No.  
11 2:15-cv-77-JCM-VCF, 2015 WL 1549270, at \*2 (D. Nev. Apr. 8, 2015) (citing *Guglielmino*  
12 *v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007)). The removing party must “(1)  
13 identify an applicable statute which could authorize an award of attorneys’ fees and (2)  
14 provide an estimate as to the time the case will require and opposing counsel’s hourly  
15 billing rate.” *Henson v. Freedom Life Ins. Co. of Am.*, No. 3:21-cv-235-LRH-CLB, 2021  
16 WL 3216466, at \*4 (D. Nev. July 29, 2021) (quoting *Hannon v. State Farm Mut. Auto. Ins.*  
17 *Co.*, No. 2:14-cv-1623-GMN-NJK, 2014 WL 7146659, at \*2 (D. Nev. Dec. 12, 2014)).  
18 Defendants fail on both fronts. First, while they correctly state that attorneys’ fees may be  
19 included in the amount in controversy (ECF No. 10 at 5), they do not cite an applicable  
20 fee-shifting statute. They also do not provide any information regarding the time needed  
21 for the case or hourly billing rates, opting instead to say no more than “attorney’s fees are  
22 likely to exceed \$25,000.” (*Id.*) This imprecise number does not provide the Court with  
23 legal certainty that attorneys’ fees would push the amount in controversy above the  
24 jurisdictional threshold because it is based exclusively on speculation.

#### 25 **B. Punitive Damages**

26 The Court also rejects Defendants’ argument that the amount in controversy  
27 requirement is met through punitive damages. (*Id.* at 6.) They argue that punitive  
28 damages could “push the amount in controversy well over \$75,000” because they are

1 often awarded in defamation per se cases and can be “substantial.” (*Id.*) However, “the  
2 mere possibility of an award of attorney’s fees or punitive damages is not sufficient to  
3 prove that the amount in controversy has been met.” *Polanski v. US Bank N.A.*, No. 3:11-  
4 cv-0356-LRH-VPC, 2011 WL 2600496, at \*1 (D. Nev. June 29, 2011). Moreover,  
5 Defendants contend this argument is “supported by case law,” but submit no such  
6 analogous cases. (ECF No. 10 at 6.) A speculative number that is not supported by  
7 specific and relevant case law cannot prove to a legal certainty that the amount in  
8 controversy has been met.

### 9 C. Injunctive Relief and Future Damages

10 Finally, Defendants argue that the economic impact of complying with injunctive  
11 relief or future reputational harm each have the possibility of exceeding \$75,000. (ECF  
12 No. 10 at 6.) To support these arguments, Defendants cite only one case: *Geographic*  
13 *Expeditions, Inc. v. Estate of Lhotka*, 599 F.3d 1102 (9th Cir. 2010). They say that the  
14 case supports their argument because it confirmed “the value of injunctive or declaratory  
15 relief is measured by the financial burden or impact on either party, not just the plaintiff,”  
16 and that “courts should consider ongoing and future damages when determining whether  
17 the amount in controversy is met.” (ECF No. 10 at 5-6.) The Court does not read it this  
18 way; *Geographic Expeditions, Inc.* does not say what Defendants claim it does and is  
19 irrelevant to the present matter.<sup>4</sup> Once again, Defendants’ claims are far too speculative  
20 to meet the legal certainty standard because they provide no specific information that  
21 demonstrates how either complying with injunctive relief or future reputational harm will  
22 exceed \$75,000. See *Lewis v. Verizon Communs., Inc.*, 627 F.3d 395, 400 (9th Cir. 2010)  
23 (“The amount in controversy is . . . not a prospective assessment of defendant’s liability.”).

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26 <sup>4</sup>*Geographic Expeditions* does analyze an amount in controversy dispute but is  
27 inapplicable here because the analysis in it focuses instead on the question of whether  
28 the preponderance of evidence standard should apply when “a party files a petition in  
federal court to compel arbitration, even when the opposing party is suing the federal  
petitioner in state court.” *Geographic Expeditions*, 599 F.3d at 1107.

1 In sum, Defendants do not prove with legal certainty that the amount in controversy  
2 exceeds \$75,000 because they only speculate what the amount may be.<sup>5</sup> The Court will  
3 therefore grant the Motion.

4 **IV. CONCLUSION**

5 The Court notes that the parties made several arguments and cited to several  
6 cases not discussed above. The Court reviewed these arguments and cases and  
7 determines that they do not warrant discussion as they do not affect the outcome of the  
8 Motion before the Court.

9 It is therefore ordered that Plaintiffs' motion to remand (ECF No. 4) is granted. This  
10 action is remanded to the Second Judicial District Court for Washoe County.

11 The Clerk of Court is directed to close this case.

12 DATED THIS 29<sup>th</sup> Day of October 2024.

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MIRANDA M. DU  
16 UNITED STATES DISTRICT JUDGE  
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27 <sup>5</sup>Even if the Court applied the Defendants' preferred preponderance of evidence  
28 standard, litigants are still required to proffer "summary-judgment-type evidence" and  
Defendants did not. *Fritsch v. Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785, 795 (9th Cir.  
2018) (citing *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 416 (9th Cir. 2018)).